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Via ECF

The Honorable Jan Dubois
United States District Court
Eastern District of Pennsylvania
Room 12613
601 Market Street
Philadelphia, PA 19106

Re: In re: Niaspan Antitrust Litigation, Master File No. 2:13-md-02460-JD

Dear Judge Dubois:

In accordance with the Court's Order dated August 17, 2021, Defendants met and conferred with Plaintiffs regarding a proposed schedule for further proceedings in this case. Plaintiffs and Defendants were unable to reach agreement. Defendants have attached a chart showing their proposal and what Plaintiffs have told us is their proposal. We understand that Plaintiffs are planning to submit their proposal separately as well.

The major area of disagreement is on when briefing of summary judgment and motions should take place. As Defendants have previously explained, we believe that the briefing should commence only once EPP class certification is finally decided. While this Court recently denied the EPPs' renewed class certification motion, EPPs have filed a petition for permission to appeal that ruling to the Third Circuit. Defendants' answer to that petition is due this Friday, September 10. If the Third Circuit promptly denies the petition, the differences

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between the parties' respective proposed timing will not be great. On the other hand, if the Third Circuit allows full merits briefing, the differences could be significant.

As Defendants have previously said, *see* EFC No. 713, they believe that they should be permitted to brief summary judgment and *Daubert* motions with knowledge of whose claims remain to be litigated. This is true both for due process reasons and because the identity of the parties may affect the content of the motions. For example, Defendants cannot evaluate damages arguments without knowing whether EPPs propose to apply their damages methodology to an EPP class or to individual EPPs. For that reason, Defendants submit that the EPP class certification motion should be finally decided before the summary judgment and *Daubert* motions calendar commences.

Very truly yours,

/s/ Stuart N. Senator

Stuart N. Senator

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SCHEDULING PROPOSALS

Event	Plaintiffs' Proposal	Defendants' Proposal	Additional Notes
All dispositive motions and <i>Daubert</i> motions filed and served.	Nov. 8, 2021	60 days after conclusion of EPP petition to appeal/appeal class certification, excluding last two weeks of December from calculation if applicable	Plaintiffs propose that no party shall file a dispositive motion before this date without prior leave of Court.
Responses to dispositive motions and <i>Daubert</i> motions filed and served.	Jan. 25, 2022	60 days after motions filed, excluding last two weeks of December from calculation if applicable	
Reply briefs to dispositive motions and <i>Daubert</i> motions filed and served. Hearing on motions TBD.	Feb. 25, 2022	40 days after oppositions	
Parties submit joint proposed trial plan, to include, but not be limited to, an identification of the common issues to be presented at trial, and a proposed procedure for an adjudication of any individualized issues relating to damages. Any areas of disagreement between the parties on the trial plan shall be highlighted for the Court.	Mar. 7, 2022	30 days after ruling on MSJs and Dauberts.	Plaintiffs propose that the trial plan be limited to the claims of the DPPs and the retailer plaintiffs. Defendants propose that the trial plan include all MDL plaintiffs, including end payor plaintiffs.
Private mediation, all parties.	Beginning on or around Mar. 14, 2022	Approximately 30 days after close of MSJ and Daubert briefing	
Parties to exchange initial list of trial exhibits (including exhibits themselves) pursuant to Rule 26(a)(3)(A)(iii) (other than documents used for cross and demonstratives).	July 15, 2022	At least the same interval proposed by Plaintiffs between the submission of the trial plan and this event. Dates for pretrial exchanges should be keyed off of the date for the pretrial conference and trial, which should not be set until summary judgment motions are decided.	

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Event	Plaintiffs' Proposal	Defendants' Proposal	Additional Notes
Parties to exchange lists of proposed witnesses and deposition designations pursuant to Rule 26(a)(3)(A)(ii).	July 29, 2022	3 weeks after exchange of exhibit list.	
Parties to file any motions <i>in limine</i> after having met and conferred in an effort to resolve each such motion; parties to exchange objections to exhibits, witness lists and deposition designations, and serve counter-deposition designations.	Aug. 5, 2022	In limine motions should be filed and deposition counter-designations should be exchanged 3 weeks after exchange of deposition designations. Exhibits should be objected to when introduced. Pre-trial objections to exhibits should be made only when a pre-trial admissibility ruling is sought. Other objections can be made at trial and need not be anticipated for all ways in which a document will be used and listed "for the record" in the submission.	
Parties to file oppositions to any motions <i>in limine</i> , and exchange drafts of proposed jury <i>voir dire</i> questions, verdict sheets and jury instructions. Parties serve responses to counter-deposition designations.	Aug. 19, 2022	3 weeks after the prior event.	
Parties jointly submit all jointly proposed jury <i>voir dire</i> questions, verdict sheets, and jury instructions to the Court; any party may submit additional proposed jury <i>voir dire</i> questions, verdict sheets, and jury instructions as to which the parties have not been able to agree, in a manner designed to facilitate Court decision of disputes.	Aug. 31, 2022	3 weeks after the prior event.	

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Event	Plaintiffs' Proposal	Defendants' Proposal	Additional Notes
<p>Parties file joint final pretrial conference statement, which shall include any stipulated facts agreed to by the parties, trial exhibits (and objections thereto, in a manner designed to facilitate Court decision of disputes) and deposition designations (and objection thereto, in a manner designed to facilitate Court decision of disputes); parties file trial briefs.</p>	<p>Aug. 19, 2022</p>	<p>Two weeks prior to final pretrial conference.</p> <p>There should not be a separate trial brief. All "trial brief" issues should be set forth in the pretrial conference statement unless there are significant non-jury issues to try.</p> <p>As noted above, the parties can submit objections to trial exhibits through in limine motions if they need decision pre-trial.</p>	<p>If trial briefs are filed, the following are the proposals for page limits:</p> <p>Plaintiffs: Trial briefs are limited to 20 pages in length. The group of all Direct Purchaser Plaintiffs shall jointly file one trial brief; the group of all Retailer Plaintiffs shall jointly file one trial brief; the group of all AbbVie Defendants shall jointly file one trial brief; and the group of all Teva Defendants shall jointly file one trial brief. Any group may incorporate by reference any other group's trial brief in whole or in part.</p> <p>Defendants: Each side shall have 40 pages for its trial briefs, which may be allocated among parties on each side as they agree among themselves. Each side shall strive to file a single integrated brief. Note that EPPs are also participants here.</p>
<p>Final pre-trial conference and hearing on outstanding motions.</p>	<p>Aug. 31, 2022</p>	<p>To be set in accordance with Court's calendar.</p>	
<p>This matter shall be specially listed for trial to commence on this date, with an estimated trial length of 3-4 weeks, depending on the Court's rulings as to the structure of the trial.</p>	<p>Oct. 10, 2022</p>	<p>To be set in accordance with Court's calendar, at least two weeks after final pretrial conference and hearing on outstanding motions.</p>	